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October 6, 2020

VIA ECF

Honorable J. Paul Oetken
District Court Judge
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: Simon J. Burchett Photography, Inc. v. Seeking Alpha, Inc., No. 20-cv-7634
(JPO)(DCF)
Response to Pre-Motion Letter Regarding Request for Plaintiff to Post Bond**

Your Honor:


I represent the plaintiff in the above-referenced matter and write in response to the defendant's request for a bond dated October 6, 2020. (Dkt. No. 12.) To clarify, no offer has been made pursuant to Fed.R.C.P. 68, nor has defendant made a "substantial offer". The claims at bar are substantially different than defendant would have this Court believe. First, defendant erroneously claims that two images were "user submitter". Plaintiff alleged two images were copied and placed in defendant's image bank, without license or authority. See Compl. at ¶¶ 15, 33-57. One of those images was then uploaded to an article by defendant's employee, and the other two were uploaded by "paid freelance contributors" who were directed by defendant to use defendant's image bank. See Compl. at ¶¶ 15, 66, 87. Plaintiff has also alleged that there is a substantial likelihood other unlicensed images that are owned by plaintiff were in defendant's image bank. Compl. at ¶ 38.

Defendant then makes several allegations regarding plaintiff that are neither supported by the allegations in the complaint or by admissible evidence submitted by the defendant. Defendant seeks to circumvent the traditional legal process set forth in the Federal Rules of Civil Procedure and this Court's Local Rules and jump straight to a determination before a motion to dismiss under Fed.R.Civ.P. 12 has been made.

Respectfully, the motion requested is frivolous, and defendant should be liable for the time wasted on such a frivolous motion.

Respectfully submitted,

GARBARINI FITZGERALD P.C.

By: 
Richard M. Garbarini

cc: Defendant via ECF